Workplace Safety and Insurance Appeals Tribunal

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Tribunal d'appel de la sécurité professionnelle et de l'assurance contre les accidents du travail

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Ontario

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Quarterly Production and Activity Report

July 1 to September 30, 2008

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Production Summary

- The active inventory totalled 4,054 (1.4% over the target of 4,000 cases). This is an encouraging reduction from the previous quarter result of 4,225.

- Incoming appeals numbered 841 and of these, 726 were appeals from WSIB decisions and 115 appellants advised they were read to proceed to hearing following a period of inactive status.
  - This compares to 762 new appeals and 158 reactivated appeals recorded in the second quarter of 2008.
  - In the 3rd quarter of 2007 the Tribunal recorded 796 new appeals and 143 re-activations.
  - In 2007, the weekly average of hearing ready appellants was 59. For Q3 2008, the weekly average of hearing ready appellants is 58. This figure excludes cases reactivated from inactive status.

- Dispositions numbered 1,025; this includes 300 dispositions in the pre-hearing areas resulting from dispute resolution (ADR) efforts and 725 after hearing dispositions; of the after hearing dispositions, 692 followed from Tribunal decisions.

- In Q3-08, the inactive inventory was 4,059 cases (at the end of Q2-08, the inactive inventory was 4,085 cases).

- In Q3-08, 76% of final decisions were released within 120 days. In 2007, 86% of final decisions were released within 120 days.

- The Tribunal's long term, or "steady state" target is an active inventory of 4,000 appeals; at this level, the Tribunal will once again be able to deliver on its promise of timely processing of appeals with hearing dates offered within four months of the appeal being confirmed as hearing ready. The Tribunal has made steady progress towards this goal. The Q3 active inventory of 4,054 appeals is a significant reduction from a high of 5,491 active appeals at the end of the third quarter of 2006. With this progress in appeal inventory reduction, parties should begin to see significant decreases in the time to schedule hearings by the end of 2008.

The Tribunal's Notice of Appeal (NOA) process places responsibility in the hands of the parties and representatives to advance a case, and requires appellants to confirm their readiness to proceed (by filing a Confirmation of Appeal) with their appeals within two years of completing the NOA.

The NOA inventory includes cases that would previously have been closed as inactive by Tribunal intervention. These "dormant" cases are tracked as part of the Tribunal's case management. Many are expected to close as abandoned appeals after a two-year period expires. At the end of the third quarter of 2008, the notice inventory

included 1,232 dormant cases, the active inventory totaled 4,054 cases, and the inactive inventory totaled 4,059 cases.

Production Charts

A. Active Inventory

Period	Active Inventory
Q1-2006	5318
Q2-2006	5414
Q3-2006	5491
Q4-2006	5225
Q1-2007	5169
Q2-2007	5043
Q3-2007	4954
Q4-2007	4649
Q1-2008	4531
Q2-2008	4225
Q3-2008	4054

B. Incoming Appeals

Period	Incoming Appeals
Q1-2006	1144
Q2-2006	1124
Q3-2006	1087
Q4-2006	1007
Q1-2007	1026
Q2-2007	950
Q3-2007	939
Q4-2007	978
Q1-2008	930
Q2-2008	920
Q3-2008	841

C. Dispositions

Period	Dispositions – total	Pre-hearing	After Hearing
Q1-2006	1146	435	711
Q2-2006	1131	477	654
Q3-2006	1083	426	657
Q4-2006	1161	362	799

Period	Dispositions – total	Pre-hearing	After Hearing
Q1-2007	1149	383	766
Q2-2007	1132	366	766
Q3-2007	1031	370	661
Q4-2007	1219	427	792
Q1-2008	1173	386	787
Q2-2008	1214	375	839
Q3-2008	1025	300	725

D. Inactive Inventory

Period	Inactive Inventory
Q1-2006	4310
Q2-2006	4350
Q3-2006	4303
Q4-2006	4235
Q1-2007	4119
Q2-2007	4109
Q3-2007	4073
Q4-2007	4067
Q1-2008	4067
Q2-2008	4085
Q3-2008	4059

E. Notice of Appeal (Dormant cases)

Period	Total Dormant	Change from previous quarter
Q1-2006	1486	-33
Q2-2006	1381	-105
Q3-2006	1308	-73
Q4-2006	1420	112
Q1-2007	1353	-67
Q2-2007	1297	-56
Q3-2007	1294	-3
Q4-2007	1358	64
Q1-2008	1233	-125
Q2-2008	1245	12
Q3-2008	1232	-13

Community Activities

Community activities for 2008 are also noted in the Tribunal's newsletter, In Focus. The newsletter is published twice per year. The current issue is May 2008 and is available at the Tribunal's web site, www.wsiat.on.ca.

On October 2nd, Dan Revington, General Counsel and Judy Chamberlain, Manager, Early Review, attended the Schedule 2 Employers' Conference. In this session, Mr. Revington provided an overview of the Tribunal and the hearings process and then focused his remarks on reconsiderations, the Ombudsman and judicial reviews. He also discussed the Tribunal's Practice Direction: Procedure When Raising a Human Rights or Charter Question. Ms. Chamberlain's participation focused on the question and answer session; her expertise in the early processing of Tribunal appeals was very helpful.

The Tribunal was represented at the recent Showcase Ontario 2008 exhibition, held in Toronto September 8th to 10th, by head librarian Wendy Reynolds. On September 9th, Ms. Reynolds spoke on behalf of the Ontario Government Libraries Council (OGLC) on the topic *"The Blogos-What? Using Web 2.0 for Current Awareness"*. The presentation on the changing internet was highly popular, with people being turned away at the door. In addition, the OGLC had a booth at Showcase on the same theme. Volunteers, including the Ontario Workplace Tribunals Library's Mary Pavic, showed visitors how to find blogs of interest, and how to use RSS readers to manage feeds.

Keep up to date with Tribunal news using an RSS feed! The Tribunal's web site is www.wsiat.on.ca; instructions are located at the bottom of the home page.

Judicial Review Activity

Third Quarter 2008

The third quarter of 2008 was again very busy in regards to judicial review activity. Most applications for judicial review are handled by General Counsel and the lawyers in the Tribunal Counsel Office.

The status of applications for judicial review involving the Tribunal for the third quarter of 2008 is set out below. Only those judicial reviews where there was some significant activity during the quarter are listed.

1. **Decision No.855/03 (November 15, 2005)**

The worker was a member of a union. Pursuant to the collective agreement, the employer made contributions on the worker's behalf to a benefit plan that provided health and dental care coverage, as well as pension plan coverage. The employer's contributions were based on the hours worked by the worker. Under the terms of the plan, part of the contributions were used to continue the worker's benefits and pension contributions for up to a year after an injury.

The worker was injured. He alleged that the employer's contribution to his benefits should be included in the calculation of his earnings for the purposes of workplace safety and insurance benefits. The worker's appeal was denied. The Vice-Chair held that Board policy did not include benefit payments and pension plans in earnings basis. There was no direct relationship between the employer's contributions and the benefits the worker received. The Vice-Chair also held that the Legislature did not intend to include contributions from all employers in Ontario in the earnings of workers, or that some workers would receive non-taxable income.

The worker commenced an application for judicial review. The Board successfully brought a motion to intervene in the judicial review. The judicial review was heard by the Divisional Court on June 27, 2007.

The Divisional Court Panel of Jennings, Swinton and Lederman released its decision on September 10, 2007. The majority of the Panel, consisting of Justices Jennings and Lederman, held the Tribunal's decision was patently unreasonable because it failed to consider the evidence of legislative history contained in submissions made to the Tribunal Vice-Chair. They ruled the decision should be referred back to the Tribunal for a re-hearing in accordance with the findings of the majority.

In her dissenting reasons, Justice Swinton held that a failure to refer to legislative history did not render the Tribunal's decision patently unreasonable. She noted this had not been raised before the Board, and was not a major issue referred to in other submissions, and moreover a failure to refer to certain evidence is not necessarily fatal to the decision of an administrative tribunal. Justice Swinton also observed that legislative history plays a limited role in the interpretation of legislation because of concern about its reliability. She held that the Tribunal's conclusion in this case was within its specialized expertise.

The Tribunal filed a notice of motion for leave to appeal to the Court of Appeal. In January the Court of Appeal granted leave to appeal (Winkler, Rosenberg and Lang). The Workplace Safety & Insurance Board again intervened. The Court of Appeal heard the appeal on September 11, 2008. Justices Borins, Rosenberg and Gillese reserved their decision. At the end of the quarter the decision was still pending.

2. Decisions Nos.167/06 (March 9, 2006), 167/06R (December 14, 2006) and 167/06R2 (September 19, 2008)

The worker's appeal for chronic pain entitlement and/or for permanent impairment of the low back on an organic basis was denied by the Tribunal. The worker's family doctor had submitted a letter suggesting the worker was a malingerer. The letter was addressed to the College of Physicians and Surgeons of Ontario, apparently in response to a complaint filed against the doctor on behalf of the worker. The Vice-Chair relied on the letter as part of the evidence he considered in denying the worker's appeal. An application to reconsider was dismissed by the same Vice-Chair.

The worker commenced an application for judicial review. The Tribunal filed its Record of Proceedings with the Court. Following conversations between the worker's counsel and Tribunal counsel, General Counsel recommended to the Chair of the Tribunal that the Tribunal undertake a further reconsideration of Decisions 167/06 and 167/06R on its own initiative. The Chair of the Tribunal referred the reconsideration to a different Vice-Chair.

In Decision 167/06R2, Vice-Chair Eleanor Smith found the threshold test for a reconsideration had been met. She held that the doctor's letter was not admissible as evidence at a Tribunal hearing by virtue of section 36(3) of the *Regulated Health Professions Act*. Section 36(3) states:

> (3) No record of a proceeding under this Act, a health profession Act or the Drug and Pharmacies Regulation Act, no report, document or thing prepared for or statement given at such a proceeding and no order or decision made in such a proceeding is admissible in a civil proceeding other than a proceeding under this Act, a health profession Act or the Drug and Pharmacies Regulation Act or a proceeding relating to an order under section 11.1 or 11.2 of the Ontario Drug Benefit Act, 1991, c.18, s. 36(3); 1996,c. 1, Sched. G., s. 27(2).

Vice-Chair Smith directed that the doctor's letter and references to the content of the letter were to be removed from the Tribunal Record for the purpose of the reconvened appeal. She also directed that Decisions Nos. 167/06 and 167/06R were to be amended to delete the portions of those decisions that incorporate portions of the doctor's letter. Vice-Chair Smith directed that the appeal be heard again on the merits.

As a result of the reconsideration decision, counsel for the worker filed a notice of abandonment of the application for judicial review.

3. **Decisions Nos.893/06 (October 12, 2006) and 893/06R (November 15, 2007)**

The worker's short term earnings were calculated based on his earnings of $25.00 an hour, with no deductions, at the time of the injury. His average earnings were reduced after 13 weeks, at which point they were based on the worker's earnings over the prior 24 months as reported to the Canada Revenue Agency through his income tax returns. The worker appealed to the Tribunal, alleging that his earnings should continue to be based on $25.00 an hour.

The Vice-Chair denied the appeal. He found the worker to be a "non-permanent employee" within the meaning of Board policy, and it was appropriate to apply Board policy to recalculate the earnings after 13 weeks to reflect average earnings. The earnings should be based on the net average earnings, not the actual gross earnings. The Vice-Chair held that the income tax records of the worker identified the true nature of the earnings of the worker. The same Vice-Chair denied the worker's application for reconsideration.

The worker commenced an application for judicial review. During this quarter the worker discharged his counsel and is now representing himself. At the end of the quarter the Tribunal was waiting for the Applicant to provide his factum.

4. **Decision No.1118/07 (January 18, 2007)**

The plaintiff was allegedly injured while employed at a nuclear generating station. He brought an action against his employer. The employer's application to the Tribunal for an order taking away the plaintiff's right to sue was granted. The Vice-Chair found that although the employer was a federal undertaking, this did not take away the Tribunal's jurisdiction. He found that the *Nuclear Liability Act* did not limit the right to claim compensation.

The plaintiff commenced an application for judicial review. The Tribunal and his employer filed responding factums. This judicial review is scheduled to be heard on October 17, 2008.

5. **Decisions Nos.1248/98 (November 13, 2003) and 1248/98R (October 11, 2007)**

The worker appealed for entitlement to benefits for his injuries to his head, eyes, spine, chest, and rib that the worker related to an accident in March 1993. The worker also sought payment of temporary total disability benefits after June 25, 1993. The hearing took place over four days, starting in August 1998 and concluding in July 2003.

The Panel had concerns about the worker's credibility. The Panel did not accept the worker's version of the accident, or that he suffered the injuries he alleged

were caused by the accident. The Panel also found that any injuries suffered by the worker had resolved by June 25, 1993.

The worker commenced an application for judicial review. He is self-represented. The Tribunal served and filed its Record. The worker has refused to pay for the transcripts of the hearing or to file a factum. At the end of the quarter the Tribunal was waiting to receive the worker's factum.

6. Decisions Nos. 207/05 (April 11, 2005) and 207/05R (January 10, 2006)

The plaintiff was injured in a motor vehicle accident. He was sleeping in a tractor-trailer driven by the defendant driver, and owned by the defendant trucking company. The defendants applied to the Tribunal for an order that the plaintiff's right of action was taken away.

The Vice-Chair found both the plaintiff and the defendant driver were workers of the defendant Schedule 1 trucking company, and that they were in the course of employment at the time of the accident. The Vice-Chair held the plaintiff's right of action was taken away.

The plaintiff commenced an application for judicial review more than two years after the Tribunal's reconsideration decision was released.

The Tribunal filed its Record of Proceedings. The defendant, which is the Tribunal's co-respondent in the judicial review, brought a motion to strike the judicial review for delay. As the plaintiff had not provided an explanation for the delay, the Tribunal supported the motion. The motion was heard on August 15, 2008. Justice Low dismissed the motion, without prejudice to the respondents renewing their request to dismiss for delay to the Divisional Court Panel hearing the judicial review.

At the end of the quarter the Tribunal was preparing its factum for the judicial review application.

7. Decision Nos. 832/04 (November 18, 2004) and 832/04R (April 5, 2007)

The worker left work due to back pain. Two weeks later the worker alleged the pain was due to an injury at work. The Board denied entitlement on the grounds it was not shown that an accident occurred in the course of employment.

The worker's appeal was denied. The Vice-Chair noted the worker's pre-existing back condition, and the absence of any medical support for the position that the back condition was caused by disablement from the nature of the work. The worker's alternative explanation that there was an accident involving carrying a ladder was not supported by the evidence.

The worker commenced an application for judicial review. At the end of the quarter the Tribunal was waiting to receive the worker's factum. This case will be heard in French.

8. Decisions Nos.1509/02 (February 2, 2004) and 1509/02R (September 27, 2006)

Two sisters were suspended at the same time for smoking in a non-smoking area at work. Sister #1 reported an accident within a few hours of returning after her suspension. Sister #2 reported an accident later that day, before the suspension took effect.

Sister #1's claim was denied by the Board. Her appeal to the Tribunal was dismissed (*Decision 1384/03*). She brought an application for judicial review. On April 6, 2005 the Divisional Court unanimously dismissed the application for judicial review. The Court stated "In our view, the Tribunal carefully reviewed the evidence and gave reasons for its decision. The decision it reached on the basis of the evidence was not patently unreasonable."

However, Sister #2's claim had been allowed by the Board. The employer appealed to the Tribunal. A Panel of the Tribunal allowed the employer's appeal, reversing initial entitlement for the worker (*Decision 1509/02*). Sister #2 also brought an application for judicial review.

Sister #2 then decided to adjourn the judicial review, to permit her counsel to file an application for reconsideration with the Tribunal. The Tribunal consented to the adjournment.

The basis of the reconsideration application was that the Panel had failed to consider the worker's alternative argument that entitlement could have been granted on the basis of a recurrence. Vice-Chair Crystal denied the reconsideration on the grounds that the worker had failed to explicitly appeal the recurrence issue to the Tribunal. However, Vice-Chair Crystal also noted that there was a final decision of the Board on the recurrence issue, and it was open to the worker to bring a time extension application should she still wish to pursue that issue at the Tribunal.

Following the release of Decision 1509/02R, the worker retained new counsel. Her new counsel filed a time extension application. In Decision 2021/07E, Vice-Chair Ferdinand denied the request for a time extension.

During this quarter the worker's counsel commenced an application to reconsider the denial of the time extension.

The judicial review application is still pending.

9. Decisions Nos. 2191/05I (July 28, 2006) and 2191/05 (November 5, 2007)

The worker appealed to the Tribunal for entitlement for multiple myeloma, which he alleged was caused by benzene exposure. After obtaining the opinion of an independent occupational hygienist, the Panel denied the appeal on the grounds that the worker's exposure to benzene in the workplace was insignificant.

The worker commenced an application for judicial review. The Tribunal was informed by the worker's former counsel that the application would not in fact be proceeding. During the last quarter the worker discharged his counsel and began representing himself. The Tribunal filed its Record of Proceedings. At the end of the quarter the Tribunal was waiting for the worker to serve his factum.

10. Decisions Nos.390/08 (February 22, 2008) and 390/08R (July 17, 2008)

The worker made a claim for an injury to his hand, arm and back after he had been terminated by his employer. The Board allowed benefits for two months in 2004. The worker appealed to the Tribunal for further benefits. The employer cross appealed, alleging no entitlement should have been granted at all. The Vice-Chair denied both the worker's appeal and the employer's cross appeal.

The worker commenced an application for judicial review. At the end of the quarter the Tribunal was waiting for the worker to provide a copy of the transcript, so the Tribunal could file its Record of Proceedings with the Divisional Court.

11. Decisions Nos.1132/02I (September 20, 2002), 1132/02 (July 13, 2004), and 1132/02R (June 15, 2005)

The worker appealed to the Tribunal for initial entitlement for a low back injury, which he alleged was caused by work incidents in 1996 and 1997. The Panel held the worker did not have entitlement for an accident in 1996, and had only entitlement for health care on an aggravation basis for the 1997 accident. The worker withdrew a claim for traumatic mental stress.

The worker has commenced an application for judicial review. It is not clear why there was a three year delay in bringing the application. At the end of the quarter the Tribunal was waiting for the worker to provide a copy of the transcript, so the Tribunal can file the Record of Proceedings.

12. Decisions Nos.397/05 (September 15, 2006) and 397/05R (February 20, 2007)

The worker injured his thumbs in 1999. He was granted LOE benefits until December 17, 2001 and a 25% NEL for the right thumb. He appealed to the Tribunal for LOE benefits after December 17, 2001, a NEL for his left thumb, or

benefits for chronic pain or psychotraumatic disability. The worker also appealed for entitlement for benefits his shoulders, neck, low back, or dystonia, which he alleged arose out of the same injury.

The worker had a non-compensable injury in 1998. There were indications the worker had a pre-existing psychological problem which arose from the 1998 injury.

The Panel held that the worker had non-organic entitlement, but no organic entitlement for his various complaints. However, the Panel found the worker had entitlement for chronic pain, which included entitlement for the dystonia and for a NEL for the right thumb, and would replace the 25% NEL award for the left thumb. The Panel also found the worker was entitled to full LOE benefits from December 17, 2001 and continuing to date. Further, the worker was found entitled to an LMR assessment.

The worker commenced an application for judicial review. There were problems with the worker's materials, and at the end of the quarter counsel for the worker was in the process of amending his materials as demanded by the Tribunal. Once the Tribunal receives the transcript from the worker, the Tribunal will file its Record of Proceedings.

13. Decisions Nos.1791/07 (August 28, 2007) and 1791/07R (March 3, 2008)

The worker, a kitchen helper, appealed the denial of entitlement for carpal tunnel syndrome, entitlement for a psycho-traumatic disability, and the amount of a NEL for chronic pain.

The worker injured his neck in November 2004. He was granted LOE benefits from May 9, 2005 until the end of 2010. Entitlement was extended to also include his low back, shoulders, and chronic pain disability. The worker was also granted a 45% NEL award for chronic pain.

The Panel held the worker had no entitlement for carpal tunnel syndrome, he was not entitled to a psycho-traumatic award, and he was not entitled to an increase in his NEL.
He also claimed he developed carpal tunnel syndrome in May 2004 as a result of work.

The worker commenced an application for judicial review. Counsel for the worker mistakenly served the Board instead of the Tribunal. The Tribunal consented to allow counsel to amend his materials subject to conditions that protected the Tribunal's interests. At the end of the quarter the Tribunal was waiting for counsel to complete the amendment of his materials.

14. Decision No.556/03 (June 27, 2008)

In September 1997 the worker suffered a workplace injury and initially received benefits for his low back and head, including a non-economic loss award of 57%. He also received loss of earnings benefits until the fall of 1999, when the Board ended benefits after videotape surveillance. The Board also reversed the NEL awarded as it related to the head injury and reduced the NEL award for the back to 5%. In related court proceedings, the worker was prosecuted for failure to report a material change in circumstances and pled guilty.

The employer appealed to the Tribunal seeking cessation of loss of earnings benefits after September 3, 1997 and revocation of the 5% NEL award for the low back. The worker cross appealed, seeking to reinstate benefits for his head and neck, ongoing wage loss benefits beyond April 21, 1998 and entitlement for chronic pain disability and/or psychotraumatic disability.

In Decision 556/03 the Panel allowed the employer's appeal and denied the worker's appeal. The Panel referred to the surveillance videotapes, which showed the worker, among other things, moving 50 lb flagstones and using a pick to remove a tree from his property. The Panel found that this was heavy work that a person would be unable to do if they had any serious back injury.

The worker had been in four car accidents before the workplace accident. The Panel noted that the Board had not had all the medical reports relating to those accidents when it made its decisions. The Panel also noted that, prior to the workplace accident, the worker had complained to his insurance companies of headaches, dizziness, cognitive disturbances, depression, neck pain, and low back pain. When he saw his specialists after the 1997 injury he did not tell them about his car accidents. The Panel also found that, based on the evidence as a whole, it was unlikely that the worker lost consciousness or suffered a skull fracture in the workplace injury. The Panel found that the worker was entitled only to four weeks' of loss of earnings benefits for the low back, and no benefits for the head and neck.

The worker commenced an application for judicial review. As of October 2008 the Tribunal was awaiting transcripts from the applicant's counsel in order to prepare and file the Tribunal's Record of Proceedings.

Highlights of Recent Decisions

Tribunal's Role in Dealing with Unlicensed Paralegals

There have been four cases in the last quarter that have examined the issue of the Tribunal's role in dealing with unlicensed paralegals, *Decision No. 1489/08I (September 12, 2008) (Nairn, Tracey, Crocker), Decision No. 1565/08I (July 25, 2008) (Cook, Wheeler, Crocker), Decision No. 598/08 (July 3, 2008) (McKenzie, Phillips, Gillies)* and *Decision No. 2508/07I (Cook)(July 4, 2008)*. All four cases have considered the Tribunal's role where a party is represented at a hearing by an unlicensed paralegal who does not appear to be exempt from registration under the *Law Society Act* and bylaws. All four cases found that the Tribunal has the authority to consider the issue and decided the representative's status as a preliminary matter.

Decision No. 598/08 accepted Tribunal Counsel Office submissions that the Tribunal had the jurisdiction to engage in an inquiry regarding whether the representative appeared to be entitled to act in the circumstances of the particular case. The Tribunal inquiry was in contrast to a final decision on the representative's actual status which would be made by the Law Society. The Panel was satisfied that the representative appeared to be covered by an exemption and the hearing continued on the merits.

Decision No. 2508/07I relied on the Tribunal's authority under s. 131 of the WSIA to control its practice and procedure and the process set out in the *Practice Direction: Representatives*. The Decision states that in situations where there is no doubt the representative is not registered and not exempt the Vice-Chair or Panel may decide the hearing should not proceed as the *Law Society Act* makes such representation unlawful. Where the representative's status is unclear, the Vice-Chair or Panel may decide that hearing should proceed and that the representative's status should be referred to the Tribunal Chair. In deciding whether the matter should proceed, the potential to bring the administration of justice into disrepute if the representative is found to be unauthorized should be balanced against the parties' right to a hearing without undue delay. This reasoning is reflected in the directions for the reconvened hearing.

Decision No. 1565/08I involved a situation where the representative and the worker were members of the Advocacy and Facilitation Group, a "grassroots organization that came together to provide help to people with disabilities in their dealings with the legal system." The representative relied on the exemption for unpaid "friends". The Panel accepted that the worker and representative were friends for the purposes of the hearing and found further investigation was unnecessary. The representative's participation was unlikely to bring the administration of justice into disrepute. The Panel was concerned about a potential for abuse if the representative or another Group member appeared as a "friend" in future and noted that the Tribunal and/or Law Society might investigate further. The circumstances of the case were brought to the Tribunal Chair's attention.

Decision No. 1489/08I considered whether a Certified General Accountant (CGA) was exempt from registration under s.1(8)(1) of the *Law Society Act*. The Panel applied *Decisions No. 598/08* and *2508/07I* and agreed that where a representative is not

licensed and clearly does not meet any of the exemptions, it would be appropriate to stop the hearing to prevent the administration of justice from being brought into disrepute. The Panel also agreed that it was the Law Society's role to make a final determination on a representative's actual status. The Panel was satisfied that it appeared that the representative was covered by the s. 1(8)(1) exemption and could continue to act, but emphasized that the ruling was limited to the facts before it, and should not be taken as authority for the proposition that all CGAs are exempt.

Admissible Evidence – Interaction with *Regulated Health Professions Act*

Decision No. 167/06R2 (July 14, 2008) (E. Smith) whether s. 36(3) of the *Regulated Health Professions Act* made a doctor's letter inadmissible. The doctor's letter was addressed to the College of Physicians and Surgeons of Ontario in response to a complaint filed by the worker's representative. The doctor sent a copy of this letter to the Workplace Safety and Insurance Board. According to s. 36(3) of the *Regulated Health Professions Act*, no record of a proceeding under the *Regulated Health Professions Act* or other similar acts, and no report or statement given in such proceeding is admissible in a civil proceeding. The Vice-Chair found that even though the letter may have had a dual purpose since it was also sent to the Board, it was not admissible due to s.36(3) of the *Regulated Health Professions Act*. The Vice-Chair directed that the appeal be reheard on the merits and that references to the contents of the letter be removed from the Tribunal record.

WSIAT
October 2008